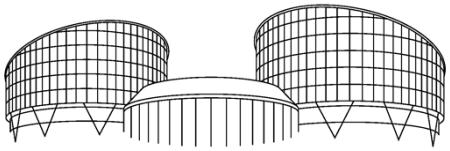

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

SECOND SECTION

CASE OF AYDIN AND OTHERS v. TURKEY

(Applications nos. 43641/05, 41892/06 and 41893/06)

JUDGMENT

STRASBOURG

16 January 2018

This judgment is final but it may be subject to editorial revision.

In the case of Aydın and others v. Turkey,

The European Court of Human Rights (Second Section), sitting as a Committee composed of:

Ledi Bianku, *President,*
Valeriu Griţco,
Stéphanie Mourou-Vikström, *judges,*
and Hasan Bakırcı, *Deputy Section Registrar,*

Having deliberated in private on 19 December 2017,

Delivers the following judgment, which was adopted on that date:

PROCEDURE

1. The case originated in 3 applications (nos. 43641/05, 41892/06 and 41893/06) against the Republic of Turkey lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") by three Turkish nationals, Mr Yasin Aydın, Mr Ahmet Gerez and Mr Nusret Kaya ("the applicants"), on 14 November 2005, 11 September 2006 and 11 September 2006 respectively.

2. The Turkish Government ("the Government") were represented by their Agent.

3. On 20 October 2008 the applications were communicated to the Government.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

4. The applicants were born in 1967, 1965 and 1972 respectively and at the time of lodging their applications they were serving their prison sentences in the Muş E-type prison.

5. On 6 and 7 March 2006 each applicant sent a letter to the Ministry of Justice, referring to the imprisoned leader of the PKK, Abdullah Öcalan, by using the honorific "sayın", meaning esteemed.

6. Pursuant to the Regulations on the administration of penitentiary institutions and the execution of sentences, the applicants were found guilty of breaching prison order by the Erzurum H- type Prison Disciplinary Board (referred hereafter as "the Board").

7. On 5 April 2006 the applicants were each sentenced to 12 days' solitary confinement on the orders of the Board, on account of the statements in the above mentioned letters.

8. On 17 April 2006 the Erzurum Enforcement Judge rejected the applicants' objections.

9. On 30 June 2006 the Erzurum Assize Court upheld the judgment of 17 April 2006.

10. Furthermore, on 4 July 2005 a disciplinary sanction was imposed on the first applicant, as he avoided visits and telephone calls to protest against the detention conditions of Öcalan. He was accordingly banned from receiving visitors for 2 months. On 21 October 2005 and 14 November 2005, respectively, the Erzurum Enforcement Court and the Erzurum Assize Court rejected the first applicant's appeal requests.

II. RELEVANT DOMESTIC LAW

11. A description of the relevant domestic law may be found in *Gülmez v. Turkey* (no. 16330/02, §§ 13-15, 20 May 2008); *Aydemir and others* v. *Turkey* ((dec.), nos. 9097/05, 9491/05, 9498/05, 9500/05, 9505/05 and 9509/05, 9 November 2010); *Yalçınkaya and Others v. Turkey* (nos. 25764/09 and 18 others, §§ 12-13, 1 October 2013, *Çetin v. Turkey* ((dec.), no. 47768/09, §§ 7-15, 14 June 2016); and *Güngör v. Turkey* ((dec.), no. 14486/09, §§ 12–16, 4 July 2017).

THE LAW

I. JOINDER

12. Having regard to the similar subject matter of the applications, the Court finds it appropriate to examine them jointly in a single judgment.

II. ALLEGED VIOLATION OF ARTICLE 10 OF THE CONVENTION

13. The applicants complained that the disciplinary punishment imposed on them for using the honorific "sayın" (esteemed) when referring to the imprisoned leader of the PKK in their letters, had constituted an unjustified interference with their right to freedom of expression under Article 10 of the Convention.

14. The Government contested that argument.

15. The Court notes that this complaint is not manifestly ill-founded within the meaning of Article 35 § 3 (a) of the Convention. It further notes

that it is not inadmissible on any other grounds. It must therefore be declared admissible.

16. The applicants complained that the disciplinary sanctions imposed on them, which were based on the Regulations on the administration of penitentiary institutions and the execution of sentences, had infringed their rights under the Convention.

17. The Court has already examined a similar complaint in the case of *Yalçınkaya and Others v. Turkey* (nos. 25764/09 and 18 others, §§ 26-38, 1 October 2013) and found a violation of Article 10 of the Convention. It has also examined the present case and finds no particular circumstances which would require it to depart from its findings in the above-mentioned judgment.

18. In view of the foregoing, the Court holds that there has been a violation of Article 10 of the Convention.

III. ALLEGED VIOLATION OF ARTICLE 3 OF THE CONVENTION

19. Relying on Article 3 of the Convention, the applicants complained that the solitary confinement that had been imposed on them as a disciplinary sanction had constituted an inhuman treatment.

20. The Government contested that argument.

21. The Court recalls that in the case of *Güngör v. Turkey* ((dec.), no. 14486/09, §§ 12 –16, 4 July 2017), which raised similar issues to those in the present case, it concluded that the 12 days' solitary confinement that had been imposed on the applicant as a disciplinary sanction, had not met the minimum threshold of severity required to fall within the scope of Article 3 of the Convention.

22. In the present applications, the solitary confinement sanction in question was also twelve days. Having examined the case, the Court sees no reason to depart from its conclusions in the case of *Güngör*, cited above.

23. Accordingly, in the light of all the material in its possession, and in so far as the matters complained of are within its competence, the Court finds that this part of the applications does not disclose any appearance of a violation of the rights and freedoms set out in the Convention or its Protocols. It should therefore be rejected as being manifestly ill-founded, pursuant to Article 35 §§ 3 (a) and 4 of the Convention.

IV. ALLEGED VIOLATION OF ARTICLE 6 OF THE CONVENTION

24. The applicants further complained under Article 6 of the Convention that while assessing the disciplinary proceedings, the domestic courts had delivered their decisions on the basis of the case files without holding

hearings. They maintained that they had been deprived of their right to defend themselves in person or through the assistance of a lawyer.

25. Referring to the amendment in domestic law, the Government asked the Court to reject this part of the applications for non-exhaustion of domestic remedies.

26. The Court notes that section 6 of the Law on Enforcement Judges was amended by Law no. 6008, so as to allow prisoners charged with disciplinary offences to defend themselves in person or through legal assistance. It further observes that the new law also provides a remedy for all prisoners previously charged with disciplinary offences: they had six months from the date of enactment of that law to lodge a fresh objection with the enforcement judge concerning their previous sentence. Such an objection would be examined by the enforcement judge in the light of the new procedure.

27. The Court has already examined that remedy and found it effective in respect of applications concerning prison disciplinary sanctions. In particular, it considered that the new remedy was accessible and provided reasonable prospects of success. In assessing the effectiveness of the new remedy, the Court had regard to sample decisions submitted by the Government, which indicated that following the lodging of objections, enforcement judges had re-evaluated the evidence in the case file and annulled the disciplinary sanctions in dispute, clearing the respective prisoners of all consequences of the offence (see *Aydemir and others v. Turkey* (dec.), nos. 9097/05, 9491/05, 9498/05, 9500/05, 9505/05 and 9509/05, 9 November 2010; *Aksoy v.Turkey* (dec.), no. 8498/05 and 158 others, 11 January 2011; *Arslan v. Turkey* (dec.), no. 9486/05, 25 January 2011; *Güler v. Turkey* (dec.), no. 14377/05, 25 January 2011; and *Çetin v. Turkey* (dec.), no. 47768/09, 14 June 2016).

28. Considering that there are no exceptional circumstances capable of exempting the applicants from the obligation to exhaust domestic remedies, the Court concludes that they should have availed themselves of the new remedy offered by Law no. 6008 of 25 July 2010.

29. This part of the applications must therefore be rejected under Article 35 §§ 1 and 4 of the Convention for non-exhaustion of domestic remedies.

IV. APPLICATION OF ARTICLE 41 OF THE CONVENTION

30. Without making any specific claims, in a letter submitted to the Court, the applicants merely stated that they should be awarded compensation.

31. The Court notes that in accordance with Rule 60 of the Rules of Court an applicant who wishes to obtain an award of just satisfaction must make a specific claim to that effect and submit details of all claims, together

with any relevant supporting documents, within the fixed time-limits. The Court observes that in the present case the applicants did not specify their claims under the head of non-pecuniary damage.

32. Therefore, the Court considers that there is no call to award them any sum on that account.

FOR THESE REASONS, THE COURT, UNANIMOUSLY,

1. Decides to join the applications;

2. Declares the complaints concerning Article 10 of the Convention admissible and the remainder of the applications inadmissible;

3. Holds that there has been a violation of Article 10 of the Convention;

4. Dismisses the applicants' claim for just satisfaction.

Done in English, and notified in writing on 16 January 2018, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Hasan Bakırcı	Ledi Bianku
Deputy Registrar	President